Supreme Court, U.S.
FILED
MAY 27 1999
CLERK

No. 98-818

In The

Supreme Court of the United States

HAROLD F. RICE,

Petitioner,

v.

BENJAMIN J. CAYETANO, GOVERNOR OF THE STATE OF HAWAII,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

JOINT APPENDIX

GIRARD D. LAU
Counsel of Record
Deputy Attorney General
State of Hawaii
Department of the Attorney General
425 Queen Street
Honolulu, Hawaii 96813
(808) 586-1360

Counsel for Respondent

THEODORE B. OLSON
Counsel of Record
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955-8500

Counsel for Petitioner

Petition For A Writ Of Certiorari Filed November 17, 1998
Petition Granted March 22, 1999

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

Page

Docket Entries for *Harold F. Rice v. Benjamin J. Cayetano, Governor of the State of Hawaii*, United States Court of Appeals for the Ninth Circuit, Docket No. 97-16095 (as of Nov. 3, 1998) 1

Docket Entries for *Harold F. Rice v. Benjamin J. Cayetano, Governor of the State of Hawaii*, United States District Court for the District of Hawaii, Docket No. 96-CV-390 (as of June 10, 1997) 5

Exhibit A to Defendant's Reply Memorandum (Apr. 17, 1997) 11

Exhibit A to Plaintiff's Memorandum in Opposition to Defendant's Motion for Partial Summary Judgment (Apr. 10, 1997) 19

Exhibits to Defendant's Motion for Partial Summary Judgment (Feb. 28, 1997)

Exhibit A 35

Exhibit B 49

Exhibit C 55

* * *

The following decision, opinion, and order have been omitted from this joint appendix because they appear on the following pages of the printed petition for a writ of certiorari:

Decision and Opinion, United States Court of Appeals for the Ninth Circuit (June 22, 1998) 1a

Order Denying Plaintiff's Motion for Partial Summary Judgment; Granting Defendant's Motion for Partial Summary Judgment, United States District Court for the District of Hawaii (May 6, 1997) ... 19a

Denial of Petition for Rehearing and Rejection of Petition for a Rehearing En Banc, United States Court of Appeals for the Ninth Circuit (Aug. 20, 1998) 44a

Docket Entries

Harold F. Rice v. Benjamin J. Cayetano,
Governor of the State of Hawaii,
United States Court of Appeals for the Ninth Circuit,
Docket No. 97-16095

(as of Nov. 3, 1998)

6/19/97 DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. CADS SENT (Y/N): Y. setting schedule as follows: CADS is past due; CADS must be filed no later than 6/26/97; appellant's designation of RT is due 6/12/97; appellees' designation of RT is due 6/23/97; appellant shall order transcript by 7/2/97; court reporter shall file transcript in DC by 8/4/97; certificate of record shall be filed by 8/11/97; appellant's opening brief is due 9/18/97; appellees' brief is due 10/20/97; appellant's optional reply brief is due 14 days from service of the answering brief. [97-16095] (hh)

* * *

9/24/97 Filed order (Deputy Clerk: tah) Aplts late mtn for an extension of time in which to file the opening brief is denied. The opening brief and excerpts of record are due 10/2/97. The answering brief is due 11/3/97. The optional reply brief is due 14 days from service of the answering brief. Court records do not reflect the issuance of the certificate of record. Aplt shall monitor the DC's issuance of the certificate. [3306788-1] setting schedule as follows: appellants' opening brief, excerpts due 10/2/97; appellees' brief due 11/3/97,; [97-16095] (crw)

10/3/97 Received Appellant Harold F. Rice's brief in 15 copies 48 pages (Informal: no) deficient incomplete cert. of compliance: notified counsel. Served on 10/2/97 [97-16095] (crw)

* * *

10/17/97 Filed original and 15 copies Appellant Harold F. Rice opening brief (Informal: no) 48 pages

and five excerpts of record in 1 vol; served on 10/2/97 [97-16095] (crw)

11/7/97 Received Appellant Harold F. Rice letter dated 11/3/97 re:notification that the certificate of record was mailed by the DC to the USCA on 9/18/97. [97-16095] (crw)

11/10/97 Filed certificate of record on appeal RT filed in DC 9/17/97 [97-16095] (crw)

11/20/97 Filed original and 15 copies aples 45 pages brief,; served on 11/17/97 [97-16095] (crw)

11/20/97 Received Amici brief in 15 copies of 40 pages; deficient: mtn to file pending with promo; served on 11/17/97. [97-16095] (crw)

11/25/97 Filed motion and deputy clerk order: (Deputy Clerk: tah) The mtn of the Office of Hawaiian Affairs, et al for leave to file a late, substitute amicus curiae brief in support of aples shall be referred to the panel that considers the merits of the case. . . . . [3346904-1] (Motion recvd 11/20/97) [97-16095] (crw)

11/28/97 14 day oral extension by phone of time to file Appellant Harold F. Rice's reply brief. [97-16095] appellant's reply brief due 12/18/97; (terr)

* * *

12/19/97 Filed original and 15 copies Harold F. Rice reply brief, (Informal: no) 25 pages; served on 12/18/97 [97-16095] (crw)

12/19/97 Filed Appellant Harold F. Rice response opposing motion & order to become amicus [3346904-1] served on 12/18/97 RECORD FOR MERITS PANEL. [97-16095] (crw)

12/23/97 Filed, as of 11/10/97, certified record on appeal in 6 Vols. (total): 6 Clerks Rec (5 folders, 1 expando) (ORIGINAL) [97-16095] (crw)

* * *

3/31/98 Filed Amicus Office of Hawaiian, Amicus State Council of HI, Amicus Kamehameha Schools, Amicus Na Pua A Ke Alii, Amicus Assoc. of Hawaiian, Amicus Ha Hawaii, Hui, Amicus Native Hawaiian Adv., Amicus Native Hawaiian Lega's motion to participate in oral argument served on 3/30/98 [3423734] PANEL [97-16095] (crw)

* * *

4/9/98 Filed order (Deputy Clerk: gb) Amici's mtn to file substitute brief is granted. Rice's mtn to file a supp brief in response to the amici brief is denied. Amici's mtn to participate in oral argument is denied. [97-16095] (crw)

* * *

5/5/98 ARGUED AND SUBMITTED TO James R. BROWNING, Melvin BRUNETTI, Pamela A. RYMER [97-16095] (cv)

6/22/98 FILED OPINION: AFFIRMED (Terminated on the Merits after Oral Hearing; Affirmed; Written, Signed, Published. James R. BROWNING; Melvin BRUNETTI; Pamela A. RYMER, author.) FILED AND ENTERED JUDGMENT. [97-16095] (crw)

6/29/98 Filed Appellee Benjamin J. Cayetano, Appellee Mazie K. Hirono bill of costs for $244, served on 6/24/98 [97-16095] (crw)

7/6/98 Filed Appellant Harold F. Rice's motion to extend time to file petition for rehearing until 7/13/~~98~~ [97-16095] served on 7/1/98 [3481639] FAXED TO PANEL [97-16095] (crw)

7/7/98 [3484010] Received original and 40 copies Appellant Harold F. Rice petition, for rehearing with suggestion for rehearing en banc, deficient: no cert of compliance served on 7/6/98. Notified counsel. (crw)

* * *

7/20/98 [3491154] Filed original and 40 copies Appellant Harold F. Rice petition for rehearing with suggestion for rehearing en banc 10 pages, served on 7/17/98 PANEL AND ALL ACTIVE JUDGES. [97-16095] (crw)

8/20/98 Filed order (James R. BROWNING, Melvin BRUNETTI, Pamela A. RYMER): . . . . The petn for rehearing is denied and the suggestion for a rehearing en banc is rejected. [3491154-1] [97-16095] (crw)

8/27/98 MANDATE ISSUED; COSTS TAXED in the amount of $244.00. [97-16095] (sm)

Docket Entries

Harold F. Rice v. Benjamin J. Cayetano, Governor of the State of Hawaii,
United States District Court for the District of Hawaii, Docket No. 96-CV-390
(as of June 10, 1997)

4/25/96	1	COMPLAINT for declaratory and injunctive relief – (Summons(es) issued) (tbf) [Entry date 04/26/96]
4/25/96	2	ORDER by Judge Alan C. Kay rule 16 conference set for 8:30 7/22/96 before Mag Judge Barry M. Kurren (tbf) [Entry date 04/26/96]
6/10/96	3	First AMENDED COMPLAINT [1-1]; summons – terminating defendant Office of Hawaiian A – on behalf of pltf (mm) [Entry date 06/21/96]
6/24/96	4	RETURN OF SERVICE executed upon defendant Benjamin J. Cayetano thru Cindy S. Inouye, deputy atty general, on 6/18/96 (mm) [Entry date 07/01/96]
6/24/96	5	RETURN OF SERVICE executed upon defendant Mazie K. Hirono thru Cindy S. Inouye, deputy atty general, on 6/18/96 (mm) [Entry date 07/01/96]
7/3/96	6	APPLICATION by plaintiff for the convening of a three judge district court; certificate of service – referred to Judge David A. Ezra (byy) [Entry date 07/05/96]

* * *

7/17/96	8	REQUEST by plaintiff for recusal sua sponte (tbf) [Entry date 07/19/96]
7/17/96	9	Second AMENDED COMPLAINT [3-1] by plaintiff; summons – issued (tbf) [Entry date 07/19/96]

* * *

7/19/96	11	RETURN OF SERVICE executed upon defendant office of the lieutenant governor, state of Hawaii thru Marian E. Tsuji,

chief of staff for Mazie K. Hirono on 7/18/96 (tbf) [Entry date 07/23/96]

7/19/96 12 RETURN OF SERVICE executed on atty general for the state of Hawaii thru Diane K. Tairo, deputy atty general for Margery S. Bronster on 7/18/96 (tbf) [Entry date 07/23/96]

7/19/96 13 RETURN OF SERVICE executed the governor office thru Stafford T. Nagatani, executive asst for Ben Cayetano upon defendant Benjamin J. Cayetano on 7/18/96 (tbf) [Entry date 07/23/96]

7/22/96 14 EO: rule 16 conference set for 8:30 8/19/96 before Mag Judge Barry M. Kurren; Geomans to notify parties; (deft was recently served) (Ct Rptr:) JUDGE Mag Judge Barry M. Kurren (tbf) [Entry date 07/23/96]

7/24/96 15 ORDER by Judge David A. Ezra denying motion for the convening of a three judge district court and denying pltf's request for recusal sua sponte [6-1] (cc: all counsel) (tbf) [Entry date 07/25/96]

* * *

8/16/96 31 ANSWER to complaint; certificate of service – on behalf of deft Poka Laenui, as to cv 96-616DAE only (mm) [Entry date 08/22/96]

* * *

8/19/96 34 EP: rule 16 pt conference held on 8:30 8/19/96; Trial set for 9:00 5/13/97 before Judge David A. Ezra; final pretrial conference set for 8:30 4/10/97; fpt stmts 4/3/97; file m/join additional parties/amend pleadings 9/16/96; Motion filing ddl set

for 9/16/96; expert witness disclosure – a. pltfs 12/13/96, b. defts 1/13/97; Discovery ddl set for 3/13/97 before Mag Judge Barry M. Kurren; settlement conf on call (cc: Goemans, Matsushima) (Ct Rptr: No Record) JUDGE Mag Judge Barry M. Kurren (mm) [Entry date 08/26/96]

8/19/96 35 Report of SCHEDULING CONFERENCE and ORDER – by Mag Judge Barry M. Kurren (mm) [Entry date 08/26/96]

8/20/96 32 CERTIFICATE of service (mm) [Entry date 08/21/96] [Edit date 08/22/96]

8/21/96 33 Second STIPULATION enlarging time to file deft's answer or other responsive pleadings to pltf's second amended complaint; ORDER – by Judge David A. Ezra: enlarging time to answer from 8/15/96 up to and including 8/23/96 – on behalf of deft (mm) [Edit date 08/22/96]

8/22/96 36 State Defts' ANSWER to complaint fo[r] declaratory and injunctive relief filed 7/18/96; exhibits "a"-"d"; certificate of service – on behalf of defts, only as to cv 96-616DAE (mm) [Entry date 08/26/96]

8/22/96 37 Pltfs' REPLY to defts' memorandum in opposition to pltfs' motion for preliminary injunction; affidavit of Clara Pila Akana Leong Kakalia; affidavit of Stephen Teruo Kubota; affidavit of Billie Martha Mary Ah Ung Kawaiola Fernandez Beamer; certificate of service – on behalf of pltfs, only as to cv 96-616DAE (mm) [Entry date 08/26/96]

8/22/96 38 Pltf Harold F. Rice's Memorandum in REPLY to memoranda filed in opposition

to pltf's second amended complaint; certificate of service – on behalf of pltf (mm) [Entry date 08/26/96]

8/23/96 39 Deft's ANSWER to pltf's second amended complaint [9-1] filed 7/17/96; certificate of service – on behalf of deft Cayetano (mm) [Entry date 08/26/96]

* * *

10/18/96 55 State Defts' SCHEDULING CONFERENCE STATEMENT; certificate of service (mm) [Entry date 10/22/96]

* * *

2/26/97 59 NOTICE OF MOTION and motion by plaintiff for partial summary judgment; memorandum in support; affidavit of John W. Goemans; exhibit "a"; certificate of service – set for 10:30 4/28/97 before Judge David A. Ezra (tbf) [Entry date 03/03/97]

2/28/97 60 NOTICE OF MOTION and motion by defendant Benjamin J. Cayetano for partial summary judgment; memorandum in support of motion; exhibits "a"-"e"; CONCISE STATEMENT of facts in support of motion; certificate of service 0 set for 10:30 4/28/97 before Judge David A. Ezra (wn) [Entry date 03/05/97]

4/8/97 61 Separate Concise STATEMENT of facts by plaintiff Harold F. Rice in support of pltf's motion for partial summary judgment [59-1]; certificate of service (mm) [Entry date 04/10/97]

4/8/97 62 MEMORANDUM by defendant Benjamin J. Cayetano in opposition to "pltf Harold F. Rice's motion for partial summary judgment" [59-1] filed on 2/26/97; certificate of service (mm) [Entry date 04/10/97]

4/9/97 63 PRETRIAL STATEMENT by defendant Benjamin J. Cayetano; certificate of service (mm) [Entry date 04/15/97]

* * *

4/10/97 68 MEMORANDUM by plaintiff Harold F. Rice in opposition to deft's motion for partial summary judgment [60-1]; exhibit "a"; certificate of service (mm) [Entry date 04/15/97]

4/10/97 69 PRETRIAL STATEMENT by plaintiff Harold F. Rice; certificate of service (mm) [Entry date 04/15/97]

4/11/97 67 * * * final pretrial conference – not held; parties agree that case will be decided by motions; trial date and related deadlines vacated; status conference re remaining issues set for 8:30 6/16/97 before Mag Judge Barry M. Kurren (Ct Rptr: No Record) JUDGE Mag Judge Barry M. Kurren (mm) [Entry date 04/15/97]

4/17/97 70 Memorandum by plaintiff Harold F. Rice in REPLY to deft's memorandum in opposition to pltf's motion for partial summary judgment [59-1]; certificate of service (mm) [Entry date 04/22/97]

4/17/97 71 REPLY memorandum by defendant Benjamin J. Cayetano in support of "deft's motion for partial summary judgment" [60-1] filed on 2/28/97; exhibit "a"; certificate of service (mm) [Entry date 04/22/97]

4/28/97	72	EP: arguments; that the motion for partial summary judgment [59-1] is submitted, that the motion for partial summary judgment [60-1] is submitted (Ct Rptr: SP) JUDGE Judge David A. Ezra (wn) [Entry date 05/02/97]
5/6/97	73	ORDER by Judge David A. Ezra denying plaintiff's motion for partial summary judgment [59-1] and granting defendant's motion for partial summary judgment [60-1] (cc: all counsel) (wn) [Entry date 05/12/97]
5/12/97	74	JUDGMENT: by Walter A.Y.H. CHINN, Clerk/Warren N. Nakamura, Deputy Clerk – is hereby entered pursuant to the "order denying plaintiff's motion for partial summary judgment; granting defendant's motion [for] partial summary judgment," filed on 5/6/97 – terminating case (cc: David L. Ross, John W. Goemans, John P. Dellera, Winfred K.T. Pong, Deborah Day Emerson) (wn)
6/2/97	75	NOTICE OF APPEAL; certificate of service – by plaintiff Harold F. Rice from Dist. Court decision [74-2] (cc: all counsel) (byy) [Entry date 06/10/97]
6/2/97	--	RECEIVED re [75-1] fee in amount of $105.00 (Receipt #173774) (byy) [Entry date 06/10/97]
6/10/97	--	NOTICE OF APPEAL and copy of docket sheet sent to 9th CCA [75-1] (cc: all counsel) (byy)

Exhibit A

Defendant's Reply Memorandum
(Apr. 17, 1997)

107 STAT. 1510 PUBLIC LAW 103-150 – NOV. 23, 1993
Public Law 103-150
103d Congress

Joint Resolution

Nov. 23, 1993 [S.J. Res. 19]

To acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii.

Whereas, prior to the arrival of the first Europeans in 1778, the Native Hawaiian people lived in a highly organized, self-sufficient, subsistent social system based on communal land tenure with a sophisticated language, culture, and religion;

Whereas a unified monarchical government of the Hawaiian Islands was established in 1810 under Kamehameha I, the first King of Hawaii;

Whereas, from 1826 until 1893, the United States recognized the independence of the Kingdom of Hawaii, extended full and complete diplomatic recognition to the Hawaiian Government, and entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1887;

Whereas the Congregational Church (now known as the United Church of Christ), through its American Board of Commissioners for Foreign Missions, sponsored and sent more than 100 missionaries to the Kingdom of Hawaii between 1820 and 1850;

Whereas, on January 14, 1893, John L. Stevens (hereafter referred to in this Resolution as the "United States Minister"), the United States Minister assigned to the sovereign and independent Kingdom of Hawaii conspired with a small group of non-Hawaiian residents of the Kingdom of Hawaii, including citizens of the

United States, to overthrow the indigenous and lawful Government of Hawaii;

Whereas, in pursuance of the conspiracy to overthrow the Government of Hawaii, the United States Minister and the naval representatives of the United States caused armed naval forces of the United States to invade the sovereign Hawaiian nation on January 16, 1893, and to position themselves near the Hawaiian Government buildings and the Iolani Palace to intimidate Queen Liliuokalani and her Government;

Whereas, on the afternoon of January 17, 1893, a Committee of Safety that represented the American and European sugar planters, descendants of missionaries, and financiers deposed the Hawaiian monarchy and proclaimed the establishment of a Provisional Government;

Whereas the United States Minister thereupon extended diplomatic recognition to the Provisional Government that was formed by the conspirators without the consent of the Native Hawaiian

people or the lawful Government of Hawaii and in violation of treaties between the two nations and of international law;

Whereas, soon thereafter, when informed of the risk of bloodshed with resistance, Queen Liliuokalani issued the following statement yielding her authority to the United States Government rather than to the Provisional Government:

"I Liliuokalani, by the Grace of God and under the Constitution of the Hawaiian Kingdom, Queen, do hereby solemnly protest against any and all acts done against myself and the Constitutional Government of the Hawaiian Kingdom by certain persons claiming to have established a Provisional Government of and for this Kingdom.

"That I yield to the superior force of the United States of America whose Minister Plenipotentiary, His Excellency John L. Stevens, has caused United States troops to be landed at Honolulu and declared that he would support the Provisional Government.

"Now to avoid any collision of armed forces, and perhaps the loss of life, I do this under protest and impelled by said force yield my authority until such time as the Government of the United States shall, upon facts being presented to it, undo the action of its representatives and reinstate me in the authority which I claim as the Constitutional Sovereign of the Hawaiian Islands.".

Done at Honolulu this 17th day of January, A.D. 1893.;

Whereas, without the active support and intervention by the United States diplomatic and military representatives, the insurrection against the Government of Queen Liluokalani would have failed for lack of popular support and insufficient arms;

Whereas, on February 1, 1893, the United States Minister raised the American flag and proclaimed Hawaii to be a protectorate of the United States;

Whereas the report of a Presidentially established investigation conducted by former Congressman James Blount into the events surrounding the insurrection and overthrow of January 17, 1893, concluded that the United States diplomatic and military representatives had abused their authority and were responsible for the change in government;

Whereas, as a result of this investigation, the United States Minister to Hawaii was recalled from his diplomatic post and the military commander of the United States armed forces stationed in Hawaii was disciplined and forced to resign his commission;

Whereas, in a message to Congress on December 18, 1893, President Grover Cleveland reported fully and accurately on the illegal acts of the conspirators, described such acts as an "act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress", and acknowledged that by such acts the government of a peaceful and friendly people was overthrown;

Whereas President Cleveland further concluded that a "substantial wrong has thus been done which in due regard for our national character as well as the rights of the injured people requires we should endeavor to repair" and called for the restoration of the Hawaiian monarchy;

Whereas the Provisional Government protested President Cleveland's call for the restoration of the monarchy and continued to hold state power and pursue annexation to the United States;

Whereas the Provisional Government successfully lobbied the Committee on Foreign Relations of the Senate (hereafter referred [107 STAT. 1512 PUBLIC LAW 103-150 – NOV. 23, 1993]
to in this Resolution as the "Committee") to conduct a new investigation into the events surrounding the overthrow of the monarchy;

Whereas the Committee and its chairman, Senator John Morgan, conducted hearings in Washington, D.C., from December 27, 1893, through February 26, 1894, in which members of the Provisional Government justified and condoned the actions of the United States Minister and recommended annexation of Hawaii;

Whereas, although the Provisional Government was able to obscure the role of the United States in the illegal overthrow of the Hawaiian monarchy, it was unable to rally the support from two-thirds of the Senate needed to ratify a treaty of annexation;

Whereas, on July 4, 1894, the Provisional Government declared itself to be the Republic of Hawaii;

Whereas, on January 24, 1895, while imprisoned in Iolani Palace, Queen Liliuokalani was forced by representatives of the Republic of Hawaii to officially abdicate her throne;

Whereas, in the 1896 United States Presidential election, William McKinley replaced Grover Cleveland;

Whereas, on July 7, 1898, as a consequence of the Spanish-American War, President McKinley signed the Newlands Joint Resolution that provided for the annexation of Hawaii;

Whereas, through the Newlands Resolution, the self-declared Republic of Hawaii ceded sovereignty over the Hawaiian Islands to the United States;

Whereas the Republic of Hawaii also ceded 1,800,000 acres of crown, government and public lands of the Kingdom of Hawaii, without the consent of or compensation to the Native Hawaiian people of Hawaii or their sovereign government;

Whereas the Congress, through the Newlands Resolution, ratified the cession, annexed Hawaii as part of the United States, and vested title to the lands in Hawaii in the United States;

Whereas the Newlands Resolution also specified that treaties existing between Hawaii and foreign nations were to immediately cease and be replaced by United States treaties with such nations;

Whereas the Newlands Resolution effected the transaction between the Republic of Hawaii and the United States Government;

Whereas the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States, either through their monarchy or through a plebiscite or referendum;

Whereas, on April 30, 1900, President McKinley signed the Organic Act that provided a government for the territory of Hawaii and defined the political structure and powers of the newly established Territorial Government and its relationship to the United States;

Whereas, on August 21, 1959, Hawaii became the 50th State of the United States;

Whereas the health and well-being of the Native Hawaiian people is intrinsically tied to their deep feelings and attachment to the land;

Whereas the long-range economic and social changes in Hawaii over the nineteenth and early twentieth centuries have been devastating to the population and to the health and well-being of the Hawaiian people;

Whereas the Native Hawaiian people are determined to preserve, develop and transmit to future generations their ancestral territory, and their cultural identity in accordance with their own

[PUBLIC LAW 103-150 – NOV. 23, 1993 107 STAT. 1513]

spiritual and traditional beliefs, customs, practices, language, and social institutions;

Whereas, in order to promote racial harmony and cultural understanding, the Legislature of the State of Hawaii has determined that the year 1993 should serve Hawaii as a year of special reflection on the rights and dignities of the Native Hawaiians in the Hawaiian and the American societies;

Whereas the Eighteenth General Synod of the United Church of Christ in recognition of the denomination's historical complicity in the illegal overthrow of the Kingdom of Hawaii in 1893 directed the Office of the President of the United Church of Christ to offer a public apology to the Native Hawaiian people and to initiate the process of reconciliation between the United Church of Christ and the Native Hawaiians; and

Whereas it is proper and timely for the Congress on the occasion of the impending one hundredth anniversary of the event, to acknowledge the historic significance of the illegal overthrow of the Kingdom of Hawaii, to express its deep regret to the Native Hawaiian people, and to support the reconciliation efforts of the State of Hawaii and the United Church of Christ with Native Hawaiians: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ACKNOWLEDGMENT AND APOLOGY.

The Congress –

(1) on the occasion of the 100th anniversary of the illegal overthrow of the Kingdom of Hawaii on January 17, 1893, acknowledges the historical significance of this event which resulted in the suppression of the inherent sovereignty of the Native Hawaiian people;

(2) recognizes and commends efforts of reconciliation initiated by the State of Hawaii and the United Church of Christ with Native Hawaiians;

(3) apologizes to Native Hawaiians on behalf of the people of the United States for the overthrow of the Kingdom of Hawaii on January 17, 1893 with the participation of agents and citizens of the United States, and the deprivation of the rights of Native Hawaiians to self-determination;

(4) expresses its commitment to acknowledge the ramifications of the overthrow of the Kingdom of Hawaii, in order to provide a proper foundation for reconciliation between

the United States and the Native Hawaiian people; and

(5) urges the President of the United States to also acknowledge the ramifications of the overthrow of the Kingdom of Hawaii and to support reconciliation efforts between the United States and Native Hawaiian people.

SEC. 2. DEFINITIONS.

As used in this Joint Resolution, the term "Native Hawaiian" means any individual who is a descendent of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

[107 STAT. 1514 PUBLIC LAW 103-150 – NOV. 23, 1993]

SEC. 3. DISCLAIMER.

Nothing in this Joint Resolution is intended to serve as a settlement of any claims against the United States.

Approved November 23, 1993.

LEGISLATIVE HISTORY – S.J. Res. 19:
SENATE REPORTS No. 103-126 (Comm. on Indian Affairs).
CONGRESSIONAL RECORD, Vol. 139 (1993):
Oct. 27, considered and passed Senate.
Nov. 15, considered and passed House.

Exhibit A

Plaintiff's Memorandum in Opposition to Defendant's Motion for Partial Summary Judgment
(Apr. 10, 1997)

OFFICE OF HAWAIIAN AFFAIRS

OHA BOARD OF TRUSTEES

The idea of an organization run by and for Hawaiians and managing Hawaiian assets was proposed at the 1978 constitutional convention and made a part of the state Constitution by the entire electorate of the state of Hawai'i, Hawaiians and non-Hawaiians alike.

OHA's overall mission was then, and is now, the betterment of conditions for all Hawaiians. It is designated the principal public agency of Hawai'i responsible for the performance, development and coordination of programs and activities relating to Hawaiians, except those within the jurisdiction of the Hawaiian Homes Commission.

The creation of the Office of Hawaiian Affairs, in fact, reflected a view of Hawaiians and their needs radically different from that held only a decade earlier. OHA's inception signaled a recognition of Hawaiians as the natives of these islands, entitled to the special legal and political considerations given indigenous people. OHA was a conceptual start toward remedying the illegal overthrow and the many social, economic and spiritual problems which resulted from it.

OHA is essentially an agency, a trust, and a government all rolled into one. Unlike Bishop Estate, the Department of Hawaiian Home Lands or the Queen's Health Systems, all of which have specific purposes, OHA's mission relates to all factors impacting the Hawaiian community, from education to housing to health to political involvement to sovereignty.

Over the years, OHA has established the following priorities: expanding its resource base, increasing recognition of OHA and the Hawaiian people within government and the community at large; enhancing and perpetuating Hawaiian culture and values; and service-oriented activities.

When Hawai'i was annexed in 1898, the self-proclaimed Republic of Hawai'i gave title, or ceded, to the United States about 1.8 million acres of the nation's crown and government lands, taken illegally in the overthrow. The Admission Act of 1959 transferred the ceded lands back to the new State of Hawai'i, reserving about 440,000 acres of land for federal use. Section 5(f) of the Admission Act said the lands were to be held as a public trust and revenue from their use or sale was to be devoted to any of five specific purposes, one of which was the betterment of conditions of native Hawaiians as defined by the Hawaiian Homes Commission Act, that is, of 50% or more blood quantum.

Section 5(f) was the principal argument for the creation of OHA. Prior to 1978, the ceded land revenues had been used for education, one of the other five purposes named in 5(f). The state claimed that the Hawaiian people were benefiting through the state public education system. At the 1978 Con Con, the Hawaiian Affairs Committee successfully argued that the intent of the law, which clearly named Hawaiians as a specific group to benefit from the trust, was not being met. After the electorate's ratification of OHA, the state Legislature established in Chapter 10, Hawai'i Revised Statutes, that OHA would be funded by a one-fifth, or 20 percent, share of ceded land revenue.

Because the trust funds are tied to a blood quantum requirement and OHA must serve all Hawaiians, OHA seeks money to match the trust funds, from the state Legislature, the federal government or private sources. In instances where the trust funds are not matched by OHA, OHA must ensure that their expenditure is for the betterment of conditions of native Hawaiians of 50% or more blood quantum. As set forth in the Constitution, OHA was structured to be governed by a nine member board of trustees, all Hawaiians elected by Hawaiians. To vote in OHA elections, you fill out an affidavit on the regular voter registration form that says you are eligible to vote in OHA elections.

The board comprises four members at-large and five from O'ahu, Maui, Moloka'i/Lana'i, and Kaua'i/Ni'ihau. Since the state Constitution stipulates that the members reside on, rather than represent, the islands, all trustees basically run in statewide contests. Trustees serve in staggered four-year terms, with four or five seats alternating in the general election every even-numbered year.

The Constitution and Chapter 10, which codified the enabling legislation for OHA, set forth the powers, duties and obligations of the board, which include managing and administering the assets of the trust, formulating policy, and exercising control over the Office of Hawaiian Affairs through an administrator appointed by the board.

OHA is frequently described as semi-autonomous. To the degree that OHA receives general funds from the Legislature as a match for trust funds, it is accountable to it. The trustees have absolute discretion over trust funds, however, and can set the policies for the office separate from

those established within the parameters of state government.

OHA trustees develop policies, oversee the execution of programs within OHA and oversee the use of trust funds. Duties include maximizing return on the trust through vigorous investment programs and overseeing trust-funded community programs for education, housing and grants. To maximize its resources and avoid duplication, OHA coordinates its efforts with other agencies and organizations, working with them to ensure appropriate delivery of services and to develop programs where gaps exist. OHA is a member of Hawaiian Service Institutions and Agencies (HSIA), together with Alu Like, Bishop Estate, Lunalilo Trust and Queen's Health Systems. As an instance of coordinating activities, OHA is taking the lead in developing a Hawaiian Master Plan that encompasses all HSIA members and beyond to the community in planning effective and appropriate delivery and/or development of services to the Hawaiian community.

In fact, OHA frequently collaborates with other Hawaiian agencies. For example, Alu Like provides business training for Hawaiians applying to OHA's Native Hawaiian Revolving Loan Fund Program. OHA has also provided operating expenses to Lunalilo Home, and the Economic Development Division is working with Lunalilo Home to increase the Home's fund development skills. In yet another instance, OHA and DHHL are collaborating on several programs, including a revolving loan program for Hawaiian homesteaders and development of a kupuna housing project in Waimanalo.

OHA has taken the position that the Hawaiian people have a right to self-determination and thus OHA supports a process which allows all the Hawaiian people to decide the form of self-governance, if any, they want. OHA maintains a seat on the Hawaiian Sovereignty Elections Council. HSEC is mandated by the Legislature to conduct a plebiscite on self-determination and arrange for a constitutional convention if the Hawaiian people vote to have one. OHA also provides half the funding for the Elections Council and its activities.

OHA BOARD OF TRUSTEES

Clayton Hee, Chairman & Trustee, O'ahu
Abraham Aiona, Vice-Chair & Trustee, Maui
Moanike'ala Akaka Trustee, Hawai'i
Rowena Akana Trustee-At-Large
Billie Beamer, Trustee-At-Large
A. Frenchy DeSoto, Trustee-At-Large
Kina'u Boyd Kamali'i, Trustee-At-Large
Moses K. Keale, Sr., Trustee, Kaua'i & Ni'ihau
Samuel L. Kealoha, Jr., Trustee, Moloka'i & Lana'i

Linda Colburn
Administrator
Sesnita A. Moepono
Deputy Administrator

OHA Home Page

OHA Background

The 1970s were a time of turmoil, nationally and locally. The values of the dominant culture were challenged by minorities of every kind in every American community. Racial minorities found new dignity in their native cultures and demanded equal treatment under the law.

Early in the decade, jumbo jets arrived in Hawai'i, quickly followed by jumbo hotels. In the next six years, the number of visitors in Hawai'i doubled.

The world shrank and Hawai'i boomed. New resorts, new highways and new subdivisions sprouted on virgin shores and sprawled into valleys and cane fields. Hawai'i's population grew by 25 percent during the decade.

The stress on local communities was felt most by rural Hawaiians. Their lives on the fringe of Hawai'i's expansion and development, in close contact with the land and sea, were suddenly shaken by eviction notices and "No Trespassing" signs. Landowners and developers sprinkled luxurious hideaway resorts and exclusive golf condominiums in the most remote and untouched corners of the islands. In many cases there was no place left for farmers and fisherman to go.

Many decided they were not going to leave without a fight. They organized themselves and fought eviction.

For the first time in almost 100 years the maka'ainana were standing up for their preferred way of life. Hawai'i would never be the same. The battles that followed are legendary:

- ❒ Kalama Valley farmer[s] organized themselves and fought eviction with noisy demonstrations and acts of civil disobedience
- ❒ Armed farmers prepared to die for their farmlands at Waiahole-Waikane;
- ❒ Niumalu on Kaua'i is defended;
- ❒ Hawaiians march for access and trail rights on the west end of Moloka'i;
- ❒ Kaho'olawe – where wave after wave of Hawaiians defied the Department of Defense to malama the wounded sacred island;
- ❒ Sand Islanders take a hopeless stand to preserve their fishing settlement on Sand Island;
- ❒ Beach access fights at Makena and Nukoli'i;
- ❒ Hale Mohalu falls to redevelopment.

The fast pace of growth in Hawai'i meant lands which had languished for years were suddenly targets for speculation and development.

Kuleana lands were challenged and lost.

It is against this historical backdrop of emerging pride and reclaiming of all that is Hawaiian with the national movement of social and cultural activism that the seeds for OHA, and other Hawaiian movement organizations were planted.

Hawaiian musicians, dancers and artists echoed the life-and-death struggles going on around them and Hokule'a gave new cultural pride to a generation of Hawaiians who began asking questions.

To get answers, several new organizations joined the ranks of older, more established ones and scholars, lawyers and researchers pored through law books, title records and legal histories to better understand the rights and entitlements of Hawaiians.

Attention then focused on the Alaska Native Claims Settlement Act, which returned 40 million acres of land to Alaskan natives and paid $1 billion into a trust fund for land which was not returned by the United States.

The birth of OHA

In 1977, an unprecedented series of "Puwalu Sessions" provided representatives from 28 organizations and many individual Hawaiians with an opportunity to discuss a wide range of Hawaiian issues.

The first session produced five top priority goals.

Opening remarks for the third session, by then State Supreme Court Chief Justice William Richardson, urged all Hawaiians to learn to use the courts to their advantage to redress grievances, to challenge adverse possession laws, and to assert gathering, access and water rights.

"Our courts," Richardson said, "have recognized that Hawai'i's land laws are unique in that they are based, in part, upon ancient Hawaiian tradition, custom and usage. This means that in some cases we can look to the practices of our ancestors as guidance to establish present day law."

Ordinary citizens became fluent in the legalese of the Constitution of 1840, the Great Mahele, the Kuleana Act, the Land Act of 1895, the Annexation Act, the Organic

Act, the Hawaiian Homes Commission Act and the Admissions Act.

In later sessions, island representatives were elected to serve as members of a mini-legislature, which prepared a set of legislative proposals called the Native Hawaiian Legislative Package.

In 1978, a Constitutional Convention was called to review <and revise where necessary< the functions and responsibilities of Hawai'i's government.

One hundred and two delegates, 90 of whom never held elected office, convened the "People's Con Con" for 60 days of arduous work. Trustee A. Frenchy DeSoto was one of those delegates, and served as chair of the Hawaiian affairs committee.

Delegates worked hard that summer to fashion amendments to the Constitution which gave birth to the Office of Hawaiian Affairs. They addressed the concern that the state was not properly using lands in the public trust. These lands <ceded to the U.S. after annexation and transferred to the state in 1959< were to be used for five purposes, one of which was to benefit native Hawaiians. Up to that point the state had largely ignored this responsibility.

Delegate recommendations, which were approved by the Convention as a whole and by a majority of Hawai'i's voters, were simple and straightforward:

❒ People to whom assets belong should have control over them;

❒ The Office of Hawaiian Affairs, a trust entity for all individuals whose ancestors were natives of the Hawaiian Islands prior to 1778, should be established to manage and administer the resources held for the benefit of Hawaiians, and to formulate policy for them;

❒ OHA will be independent from the executive and all other branches of government although it will assume the status of a state agency;

❒ The status of OHA will be unique and special and the office shall have the power to govern itself through a board of trustees;

❒ OHA shall be modeled after the University of Hawai'i, so it will have maximum control over its budget, assets and personnel.

In 1979, the Legislature enacted what is now Chapter 10, HRS, which implemented Article XII, Sections 5 and 6 of the Constitution, by creating a strong and semi-autonomous "self-governing corporate body."

The Office of Hawaiian Affairs

OHA then, is an agency, a trust and a government all at once. Its mission is the betterment of conditions of all Hawaiians and to provide Hawaiians with the opportunity for a better life and future.

In order to accomplish its mission, OHA's master plan sets the direction. OHA will:

❒ Coordinate programs for Hawaiians

❒ Provide programs for Hawaiians if none exist

❒ Advocate for Hawaiians

❒ Serve as a receptacle for reparations

This broad purpose is very different from organizations like Bishop Estate, the Department of Hawaiian Home Lands or the Queen's Medical Center. These organizations have specific purposes education, homesteading or health care while OHA reaches to all areas of the community.

The list of programs and services the agency offers is lengthy. It helps provide scholarships for students, loans for businesses, and houses for homesteaders. It advocates for Hawaiian water rights and supports legal efforts for Hawaiians to secure title to their land. It speaks on behalf of Hawaiians in Congress, the Legislature, and the City and County Councils and supports numerous cultural activities statewide. Its health division works closely with other agencies across the state to ensure that Hawaiian needs and values are taken into consideration when health policy is created.

The list of OHA activities is much larger than this. To detail all programs would take much more space than allotted here. However, in the next few pages some of OHA's more recent endeavors are listed along with some information about OHA finances. We hope that you take the time to look at this, both to enhance your knowledge of the office, and so you can take better advantage of what the agency has to offer.

OHA Home Page

Working for the betterment of a people

"In the past, OHA has shied away from beating its own drum. However, it is important that legislators, beneficiaries and the general public become more aware of OHA's accomplishments and the many positive ways in which OHA has impacted the community."

Linda Colburn, OHA Administrator

OHA assets are Hawaiian assets. Money that OHA receives is redirected to programs and services that directly, and indirectly, benefit all Hawaiians. OHA generally does not provide direct services but supports groups and agencies that do. To many Hawaiians this gives the impression that OHA is doing little for the community. Not so. OHA support for Hawaiians reaches to all corners of the state, from poi mills and self-help homes in Kaua'i, to community-based economic development projects in Ka'u. OHA funds also support agencies working for Hawaiians such as Alu Like, and the Wai'anae Diet, and promotes organizations striving to preserve the culture such as Na Kalaiwa'a Moku O Hawai'i that built the Makali'i voyaging canoe.

The following is a list of some of OHA's most important programs and the funds allocated in fiscal year 1995 to support these programs. This is not a comprehensive list; some smaller allocations are not included. Also, other trust funds are allocated by OHA trustees to specific projects that are not part of a particular division's budget. An example of this is the $2 million the board appropriated to support Punana Leo's efforts on the Big Island.

Other examples of such expenditures include OHA's support for the Makali'i voyaging canoe and Rocky Jensen's apprenticeship program. Some of the programs listed are funded entirely by trust funds. Other[s] have a match from private foundations, the state [or] federal governments.

HEALTH AND HUMAN SERVICES

- ❒ Wai'anae Diet – $80,000 in support for diet that incorporates Hawaiian traditional foods and values into an overall nutritional plan
- ❒ Alu Like – $596,000 to fund the project's multi-service system.

CULTURE

- ❒ Western Museums project – $10,000 for scholarships and support of conference to help bridge the gap between museums and the native communities whose artifacts are displayed.
- ❒ Makali'i canoe – $85,000 to support voyaging canoe on its trip to the Marquesas and back
- ❒ Rocky Jensen carving school – $30,000 to support apprenticeship program for Hawaiian carvers
- ❒ Hawaiian artisans directory – $4,000 to create a directory of native Hawaiian artists
- ❒ 'Aha No'eau – $125,000 to support conferences that bring together practitioners of different aspects of the culture. (i.e. lomi lomi, hula, etc.)
- ❒ Hana fishpond rebuilding – $10,000 to support Hana youth efforts to rebuild local fishpond walls

LAND AND NATURAL RESOURCES

❒ Hawaiian rights project – $80,000 in funds for legal assistance to Hawaiians with claims to land, natural resources and related entitlements
❒ Operation Blueprint – $50,000
❒ Federal liaison – $37,000
❒ OHA kuleana legal fund – $55,000
❒ Legal (Waiahole Ditch water) – $350,000
❒ NHLC Land Title Project – $630,548 to provide legal assistance to native Hawaiians defending land titles or interest in real property in Hawai'i.
❒ DHHL Individual Claims Panel – $350,000
❒ State Burials Program – $66,396

ECONOMIC DEVELOPMENT

❒ Native Hawaiian Revolving Loan Fund program – Nearly $4 million in support for loans to Hawaiians to start up businesses. (OHA has contributed $7.3 million to the program since it began in 1989.)
❒ CBED Grants – $150,000 for community based economic development groups statewide.
❒ CBED research – $10,000
❒ Technical assistance workshops – $25,000 for technical assistance workshops to provide revolving loan fund recipients with business development skills.

EDUCATION

❒ Early Education program – $132,000 for travelling preschool on Maui.
❒ Na Pua No'eau grant – $136,000 to assist the UH-Hilo program for gifted and talented Hawaiian children with statewide expansion plans

❒ Tutorial program – $172,000 in grants for tutorial programs in schools and community schools/associations to increase test point scores and grade point averages for
❒ Scholarship program – $50,000 in scholarships for students seeking post secondary education.
❒ 'Aha 'Opio – $27,000 to support youth Legislature program that teaches Hawaiian students how to become outstanding leaders in their communities and in government.

HOUSING

❒ Waimanalo kupuna housing project – to include low-income housing, commercial center and community center, $500,000 to begin pre-development work and to leverage an additional $2 million in funding
❒ Hawaiian homesteader loan program – $20 million allocated in 1994; to date $700,000 used to assist 25 families.
❒ Self-help housing administrative management costs – $7,500 per home: Waimea, Kawaihae, Hawai'i, 20 homes; Ho'olehua, Moloka'i, 20 homes; Maunalaha and Kahana valleys, O'ahu, 15 and 10 homes < $487,500
❒ Kalapana – $140,000 to rebuild a new community for Kalapana residents.
❒ Kaua'i Habitat for Humanity – $1.7 million 0% interest loan built 22 homes in 1995.

PLANNING

❒ Grants and Purchase of Services – $1,208,009 in grants to groups engaged in activities that benefit native Hawaiians

❒ Donations – $104,839 to support a donations program that assists native Hawaiians with survival funds in critical gap periods.

OHA Home Page

Exhibit A

Defendant's Motion for Partial Summary Judgment
(Feb. 28, 1997)

STANDING COMMITTEE REPORT NO. 59

Your Committee on Hawaiian Affairs was referred proposals numbered 405, 674 and 676 all relating to a public trust entity and the creation of new sections in Article XI. Your Committee on Hawaiian Affairs begs leave to report as follows:

This report covers Article XI, entitled "Hawaiian Home Lands," Article XVI, entitled "Schedule," Article X, entitled "Conservation and Development of Resources," and Article XIV, entitled "General and Miscellaneous Provisions."

All committee meetings were open to the public, and representatives of organizations and individual citizens interested in the above-mentioned proposals were invited to present their views on the subjects covered by the proposals at public hearings.

The following citizens presented their views:

Richard Hoke; Sid Quintal; Melvin Kalahiki; Mililani Trask; Keoni Agard; Georgiana K. Padeken; Christobel Kealoha; Joyce Kaiona; Karl A. Mowat; Glenn Davis; Walter Ritts; Rachel Kamakana; Clara Ku; Dr. Emmett Aluli; Rose Kamakani; Charles K. Maxwell; Christine Teruya; Katherine Deardon; Amelia C. Abreu; Tadao Suemori; Linda Moriarty; David Sprout; Charles Forward; Rosemary K. Smith; Herbert Kauhi; Andrew Vento; Nathen Kaleiwahea; Brenda L. Lee; Alika Cooper; Steve Kaneai Morse; Linda Dela Cruz; Herman Paakonia; Renwrick Tassil; Moanikeala Akaka; Charles Warrington; Sonny Kaniho.

Article XI is amended by deleting the title and adding a new title to read:

"[HAWAIIAN HOME LANDS] HAWAIIAN AFFAIRS"

Your Committee changed the title of Article XI in order to reflect the new format of this article which will now include areas beyond that of the Hawaiian home lands. Your Committee has included several new sections to Article XI that will affect all native Hawaiians. Previously Article XI applied only to those who could qualify for Hawaiian home lands and who were historically defined by the Hawaiian Homes Commission Act, 1920, as amended, as lessees based on a requirement of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778. In looking to the future, your Committee decided that it is of utmost importance to establish a trust entity that would be for all individuals whose ancestors were natives of the area which consisted of the Hawaiian Islands prior to 1778, the date that marks the arrival of Captain Cook to these shores. In the sections that follow, your Committee refers to all descendants, regardless of blood quantum, as being native Hawaiians. Your Committee determined that the time was ripe to establish a trust entity with an elected board of trustees that would control and manage the assets and inheritance, and financial assistance belonging to all native Hawaiians, and to formulate policy relating to their affairs. (See discussions of new Sections 5, 6 and 7 to Article XI.) Thus your Committee concluded that it should broaden the name of this article to reflect the concepts in the sections that follow.

Article XI is amended by adding a new section to read:

"PUBLIC TRUST

"Section 4. The lands granted to the State of Hawaii by Section 5(b) of the Admission Act and pursuant to Article XIV, Section 8 of the State Constitution, excluding therefrom lands defined as 'available lands' by Section 203 of the Hawaiian Homes Commission Act, 1920, as amended, shall be held by the State as a public trust for those native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended or may be amended, and the general public."

This new section recites the trust corpus of Section 5(b) and names the two principal beneficiaries established in Section 5(f) of the Admission Act — those native Hawaiians as defined by the Hawaiian Homes Commission Act, 1920, as amended, and the general public. Your Committee decided to include the words "as may be amended" to follow "Hawaiian Homes Commission Act, 1920, as amended," in order to permit the Constitution in the future to reflect the change, if any, in the qualification of blood quantum set forth in that Act for native Hawaiians. Although your Committee was tempted to change this outmoded rule from the 1920s, your Committee concluded that this responsibility should be assumed by the Office of Hawaiian Affairs.

The Admission Act does not specify what percentage of the trust shall be allocated to native Hawaiians of one-half blood. The committee members felt that the proportion should rightfully be based either on equal division or

at least on a percentage of the five purposes. The committee was unanimous in deciding that the pro rata share should not be based on population census or a percentum thereof.

Your Committee reviewed the history behind the trust set forth in Section 5(b) of the Admission Act in order to arrive at this recital.

As a result of the revolution on January 17, 1893, the crown lands, which belonged to the Hawaiian people, were ceded by the Republic of Hawaii to the United States. These lands were conveyed back to the State on Hawaii's admission to the Union pursuant to Section 5(b) of the Admission Act. Section 5(f) of the Admission Act created a trust of these public lands separate and apart from the lands defined as "available lands," by section 203 of the HHCA, 1920, as amended. Your Committee found that the section 5(f) trust created two types of beneficiaries and several trust purposes one of which is native Hawaiians of one-half blood.

Article XI is amended by adding a new section to read:

"OFFICE OF HAWAIIAN AFFAIRS;
ESTABLISHMENT OF BOARD OF TRUSTEES

"Section 5. There is hereby established an Office of Hawaiian Affairs. The Office of Hawaiian Affairs shall hold title to all the real and personal property now or hereafter set aside or conveyed to it which shall be held in trust for native Hawaiians. There shall be a board of trustees for the Office of Hawaiian Affairs elected by qualified voters who are native Hawaiians, in accordance with law. The board members shall be native Hawaiians.

There shall be not less than 9 members of the board of trustees; provided that each of the following islands have at least one representative: Oahu, Kauai, Maui, Molokai and Hawaii. The Board shall select a chairman from its members."

Your Committee added this new Section 5 relating to the Office of Hawaiian Affairs and the establishment of an elected board of trustees in order to provide a receptacle for any funds, land or other resources earmarked for or belonging to native Hawaiians, and to create a body that could formulate policy relating to all native Hawaiians and make decisions on the allocation of those assets belonging to native Hawaiians. Moreover, in looking to the future the office will be able to receive and administer any reparations money, which will probably be awarded to all native Hawaiians regardless of blood quantum.

Your Committee is unanimously and strongly of the opinion that people to whom assets belong should have control over them. After much deliberation and attention to testimony from all parts of the State, your Committee concluded that a board of trustees chosen from among those who are interested parties would be the best way to insure proper management and adherence to the needed fiduciary principles. In order to insure accountability, it was felt that the board should be composed of elected members. This amendment provides for direct participation in the selection process of the board of trustees by all native Hawaiians. The committee determined that such participation will avoid the much-justified criticism which has been directed at the Hawaiian homes commission for, among other things, its inability to respond adequately to the needs of native Hawaiians of one-half

blood. The election of the board will enhance representative governance and decision-making accountability and, as a result, strengthen the fiduciary relationship between the board member, as trustee, and the native Hawaiian, as beneficiary. The cost for electing the board of trustees would be nominal, provided it is held at the same time as the state general elections.

Finally, the committee agreed that the board should be elected by all the beneficiaries. Certainly they would best protect their own rights. Such a practice is in line with the basic principles of a democratic society. Your Committee decided that at least nine members were necessary to allow for the proper representation. Your Committee felt that it was important that there be some deference to island representation. Thus the committee included the specific provision requiring at least one representative from each of the following islands: Oahu, Kauai, Maui, Molokai and Hawaii. The committee felt that the legislature could arrive at a proper apportionment scheme for the remaining seats, although the committee did feel that an at-large election might suffice.

In addition, your Committee has delegated to the legislature the responsibility of implementing the election for the board. Your Committee did provide, in the transitory provision that follows, for the election to be held simultaneously with the general election. But the legislature is delegated the responsibilities of (1) determining the final apportionment scheme, (2) arriving at a method whereby voters will demonstrate proof that they are native Hawaiians, (3) developing procedures for registering qualified voters and (4) administering the ballot.

The committee intends that the Office of Hawaiian Affairs will be independent from the executive branch and all other branches of government although it will assume the status of a state agency. The chairman may be an ex officio member of the governor's cabinet. The status of the Office of Hawaiian Affairs is to be unique and special. The establishment by the Constitution of the Office of Hawaiian Affairs, with power to govern itself through a board of trustees (see Section 6, following), results in the creation of a separate entity independent of the executive branch of government. Moreover, the office shall have the power to hold title to all the real and personal property now or hereafter set aside or conveyed to it. The committee developed this office based on the model of the University of Hawaii. In particular, the committee desired to use this model so that the office could have maximum control over its budget, assets and personnel. The committee felt that it was important to arrange a method whereby the assets of Hawaiians could be kept separate from the rest of the state treasury. The committee learned that in the past there has been commingling of funds intended for native Hawaiians of one-half blood with other moneys in the state treasury. The committee felt it imperative that this practice stop.

Article XI is amended by adding a new section to read:

"POWERS OF BOARD OF TRUSTEES

"Section 6. The board shall exercise power in accordance with law, to manage and administer the proceeds from the sale or other disposition of the lands, natural resources, minerals, and income derived from whatever

sources for native Hawaiians, including all income and proceeds from that pro rata portion of the trust referred to in Section 4 for those native Hawaiians as defined in the Hawaiian Homes Commission Act, 1920, as amended or may be amended; formulate policy relating to affairs of native Hawaiians, and exercise control over real and personal property set aside by state, federal, or private sources and transferred to said Board for Native Hawaiians. The board shall have the power to exercise control over the Office of Hawaiian Affairs through its executive officer, the administrator of the Office of Hawaiian Affairs, who shall be appointed by the board."

Your Committee decided to grant native Hawaiians the right to determine the priorities which will effectuate the betterment of their condition and welfare by granting to the board of trustees powers to "formulate policy relating to affairs of native Hawaiians." Your Committee created the board of trustees of the Office of Hawaiian Affairs in the Constitution to insure that it would handle the assets and financial affairs of native Hawaiians. It is intended that these powers will include the power to contract, to accept gifts, grants and other types of financial assistance and agree to the terms thereof, to hold or accept legal title to any real or personal property and to quality under federal statutes for advantageous loans or grants, and such other powers as are inherent in an independent corporate body and applicable to the nature and purposes of a trust entity for native peoples. These powers also include the power to accept the transfer of reparations moneys and land.

Your Committee included the provision that the board would select an administrative officer to handle the

management and operation of the office. The committee wanted to create a separate position for these activities so that such a person could be employed on a full-time basis.

In making this decision, your Committee intends that the Office of Hawaiian Affairs would be able to accept title to the Hawaiian home lands in the event that said lands are transferred to it for administrative or any other purposes.

The committee intends this section to be broad enough to include within its scope the administration and management of the native Hawaiian land trust created by the Hawaiian Homes Commission Act of 1920. The Hawaiian Homes Commission Act, which provides for the administration of the Hawaiian home lands by the Hawaiian homes commission, was adopted as state law in Article XI of the Hawaii State Constitution in 1959. The Hawaiian home lands was created by the Act of 1920 whereby Congress set aside 200,000 acres of land in Hawaii for the rehabilitation and resettlement of native Hawaiians of one-half blood, under the management of the Hawaiian homes commission. It was felt at that time that only a return to the land could halt the sharp decline in numbers and the unfavorable trends in economic and social disorganization that were becoming apparent among the Hawaiian people. Title to these Hawaiian home lands remained with the United States prior to Statehood but was vested in the State of Hawaii upon the admission of Hawaii into the Union.

Pursuant to Section 6, the board of trustees could assume the trust responsibilities of the Hawaiian homes

commission. Since Section 202 of the Hawaiian Homes Commission Act provides for the establishment of the Hawaiian homes commission, it constitutes the principal section which would have to be amended in order to eliminate the present practice of appointing commissioners and substituting therefor the elective model provided for in Section 5.

In accordance with section 7(b) of Public Law 86-3, 86th Congress, Section 4 of the Admission Act became a part of Article XI, Hawaii State Constitution, at the election held on June 27, 1959, allowing Section 202 and other provisions relating to administration to be amended without congressional consent in the Hawaii State Constitution. The consolidation of the two trusts under the control and management of a single board would facilitate the attainment of the objective of the trusts: to provide for the betterment of the conditions of native Hawaiians. Such a merger would avoid duplication and waste of administrative expenditures.

Furthermore, this section empowers the board to administer and manage the pro rata share of assets derived from the public lands granted to those native Hawaiians as defined in the Hawaiian Homes Commission Act, 1920, as amended or may be amended, under Section 5(f) of the Admission Act.

Your Committee concluded that these Sections 5 and 6, taken together, are of utmost importance for they provide for accountability, self-determination, methods for self-sufficiency through assets and a land base, and the unification of all native Hawaiian people.

Unlike the Act and the section 5(f) trust, this trust is established for the benefit of all native Hawaiians, including those defined as native Hawaiians under the Hawaiian Homes Commission Act, 1920, as amended, and the restoration of their culture. The committee recognizes the right of native Hawaiians to govern themselves and their assets by their assumption of the trust responsibility imposed on the State to better their condition.

Article XI is amended by adding a new section to read:

"DEFINITION: NATIVE HAWAIIAN

"Section 7. Native Hawaiian means any individual any of whose ancestors were natives of the area which consisted of the Hawaiian Islands prior to 1778.

"Native Hawaiians of one-half blood means any individual of not less than one-half part of the blood of races inhabiting the Hawaiian Islands previous to 1778."

Your Committee decided to add this new section defining native Hawaiians in order to clarify any ambiguity that might exist. Since 1920, native Hawaiians have been defined only in the Hawaiian Homes Commission Act, 1920, as amended, in Section 201(7), which states: "The term 'native Hawaiian' means any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778." Native Hawaiians of one-half blood will not be a subgroup under this definition. The committee believes that the time has come to include all native Hawaiians, regardless of blood quantum, for the number of descendants is increasing. This qualification has proved to be a

factor in dividing the Hawaiian community — mothers and fathers from their children, cousins from cousins, friends from friends. Moreover, the removal of a blood qualification will be in line with the current policy of the federal government to extend benefits for Hawaiians to all Hawaiians regardless of blood quantum.

Your Committee believes that this division among people who are of the same blood and may even be parent and child is not right or fair. The committee felt that the rule may even put undue pressure on a person's choice of who to bear children with. Your Committee took notice of the history of the two generations intervening between 1920 and 1978, which included two generations of further interracial offspring. Thus a rationale that may have had legitimacy in 1920 has now become outmoded.

Article XVI is amended by adding a new section to read:

"EFFECTIVE DATE FOR OFFICE OF HAWAIIAN AFFAIRS

"Section . The legislature shall provide for the implementation of the amendments to Article XI in Sections 5 and 6 on or before the first general election following ratification of the amendments to Article XI in Sections 5 and 6."

Your Committee added this new section to Article XVI in order to provide for implementation of the election of the board of trustees to the Office of Hawaiian Affairs. Your Committee felt that the election could be most economically held at the same time as a general election. Moreover, to have implementation of the

amendments to Article XI on or before the first general election following ratification would give the legislature adequate time to develop the necessary procedures.

Section 5 of Article X relating to farm and home ownership is amended to read:

"That pro rata portion of the [The] public lands set aside for the general public in Section 4 of Article XI, hereof, shall be used for the development of farm and home ownership on as widespread a basis as possible, in accordance with procedures and limitations prescribed by law."

The committee has amended this section in order to conform it to the general intent and purpose of new Sections 4 and 6 of Article XI which grant control over the trust created for those native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended or may be amended, in Section 5(b) of the Admission Act to the Office of Hawaiian Affairs. It is the remaining pro rata share of the public lands belonging to the general public that should be managed under this section. The policy governing the portion which was set aside for the betterment of native Hawaiians will be dealt with exclusively by the Office of Hawaiian Affairs. Section 8 of Article XIV relating to compliance with trust is amended to read:

"Section 8. Any trust provisions which the Congress shall impose, upon the admission of this State, in respect of the lands patented to the State by the United States or the proceeds and income therefrom, shall be complied by

appropriate legislation. Such legislation shall not diminish or limit the benefits of native Hawaiians under Section 4 of Article XI."

The Committee decided to amend this section to once again conform another section of the Constitution to the policies and powers set forth in Article XI, Section 4, relating to the public trust, and Section 6, relating to the powers of the board of trustees of the Office of Hawaiian Affairs. Therefore your Committee recommends: (1) that the above-numbered proposals referred to your Committee be filed; and (2) that Committee Proposal No. 13* pass first reading in the form shown.

Signed by all members of the Committee except Delegates Alcon and Hagino.

---

* For the complete text of this proposal, see Committee Proposal No. 13, page 812.

Exhibit B

Defendant's Motion for Partial Summary Judgment
(Feb. 28, 1997)

COMMITTEE OF THE WHOLE REPORT NO. 13

Your Committee of the Whole, to which was referred Stand. Com. Rep. No. 59 of the Committee on Hawaiian Affairs and Com. P. No. 13, entitled "A Proposal Relating to Hawaiian Affairs," having held a meeting on September 2, 1978 and having fully debated and considered the report and proposal, begs leave to report as follows:

The proposal covered a new title and four new sections to Article XI, which were considered together with a new section to Article XVI and amendments to Section 5 of Article X and Section 8 of Article XIV. Only one amendment was offered to Com. P. No. 13. The action taken is set forth as follows.

An amendment to the new Sections 4, 5, 6 and 7 of Article XI, reading as follows, was offered:

"PUBLIC TRUST

"Section 4. The lands granted to the State of Hawaii by Section 5(b) of the Admission Act and pursuant to Article XIV, Section 8 of the State Constitution, excluding therefrom lands defined as 'available lands' by Section 203 of the Hawaiian Homes Commission Act, 1920, as amended, shall be held by the State as a public trust for [those] native Hawaiians[, as defined in the Hawaiian Homes Commission Act, 1920, as amended or may be amended,] and the general public."

"OFFICE OF HAWAIIAN AFFAIRS;
ESTABLISHMENT OF BOARD OF TRUSTEES

"Section 5. There is hereby established an Office of Hawaiian Affairs. The Office of Hawaiian Affairs shall hold title to all the real and personal property now or hereafter set aside or conveyed to it which shall be held in trust for native Hawaiians and Hawaiians. There shall be a board of trustees for the Office of Hawaiian Affairs elected by qualified voters who are [native] Hawaiians, in accordance with law. The board members shall be [native] Hawaiians. There shall be not less than 9 members of the board of trustees; provided that each of the following Islands have one representative: Oahu, Kauai, Maui, Molokai and Hawaii. The Board shall select a chairman from its members."

"POWERS OF BOARD OF TRUSTEES"

"Section 6. The board shall exercise power in accordance with law, to manage and administer the proceeds from the sale or other disposition of the lands, natural resources, minerals, and income derived from whatever sources for native Hawaiians and Hawaiians, including all income and proceeds from that pro rata portion of the trust referred to in Section 4 for [those] native Hawaiians [as defined in the Hawaiian Homes Commission Act, 1920, as amended or may be amended]; formulate policy relating to affairs of native Hawaiians and Hawaiians, and exercise control over real and personal property set aside by state, federal, or private sources and transferred to said Board for [Native] native Hawaiians and Hawaiians. The board shall have the power to exercise control

over the Office of Hawaiian Affairs through its executive officer, the administrator of the Office of Hawaiian Affairs, who shall be appointed by the board."

"DEFINITION: HAWAIIAN; NATIVE HAWAIIAN

"Section 7. The term [Native] "Hawaiian" means any [individual any of whose ancestors were natives of the area which consisted of the Hawaiian Islands prior to 1778.] descendant of the races inhabiting the Hawaiian Islands, previous to 1778.

"[Native Hawaiians of one-half blood] The term "native Hawaiian" means any [individual] descendant of not less than one-half part of the blood of races inhabiting the Hawaiian Islands previous to 1778[.] as defined by the Hawaiian Homes Commission Act, 1920, as amended or may be amended."

Recommendation: Your Committee recommends adoption of this amendment. There was no objection to this amendment.

This amendment is considered housekeeping in nature. It clarifies the definitions in the amended Section 7 of Article XI. The amendment will assist the delegates and all readers in readily understanding this section. The term "Hawaiian" includes all Hawaiians. The group of Hawaiians traditionally referred to as "native Hawaiians" continues to follow the definition of the Hawaiian Homes Commission Act, 1920, as amended. It is important to qualify that definition by including the phrase "or may be amended" so as to allow the Constitution to reflect any changes that could possibly occur in this Act.

The new Sections 4, 5 and 6 to Article XI have been conformed to this improved definitional section. There has been no change in content.

No other amendments were offered to Com. P. No. 13. However, your Committee did consider the merits of this proposal.

Members were impressed by the concept of the Office of Hawaiian Affairs which establishes a public trust entity for the benefit of the people of Hawaiian ancestry. Members foresaw that it will provide Hawaiians the right to determine the priorities which will effectuate the betterment of their condition and welfare and promote the protection and preservation of the Hawaiian race, and that it will unite Hawaiians as a people.

The present Hawaiian population is a young one. Approximately 50 percent of the total Hawaiian population is under the age of 70. The Hawaiian people today should be given the opportunity to provide for the betterment of the condition and well-being of these young Hawaiians and to address the contemporary problems that Hawaiians face – crime, inadequate housing conditions, welfare rolls and education. This proposal gives Hawaiians, a great and proud people, the opportunity and the means to do so. Your Committee feels that it is time the Hawaiians have more impact on their future.

Your Committee found that the Office of Hawaiian Affairs is appropriately modelled after that of the University of Hawaii so as to give it maximum independence. The most important aspect of this model is the power to govern itself. The public trust entity provides a democratic process for the beneficiaries in order to insure

accountability and opportunity for scrutiny of the trustees by the beneficiaries. It is an umbrella organization that is designed to embrace native Hawaiians and Hawaiians, the management of their assets and resources, the receipt of any future benefits, and possibly the administration of the department of Hawaiian home lands.

Your Committee of the Whole agreed with the reasoning of the Committee on Hawaiian Affairs regarding the election of the board of trustees. Your Committee felt that the legislature could best handle the further details necessary for the apportionment scheme. Proof of ancestry could also be determined by the legislature, although members did suggest several methods: birth certificates, genealogies, sworn statements and testimony of others. Your Committee concluded the elections would be constitutional, for the beneficiaries should rightfully have control and influence over their assets and future.

Moreover, it appears that the Committee on Hawaiian Affairs closely examined this issue. If one looks to the precedent of other native peoples, one finds that they have traditionally enjoyed self-determination and self-government. They have power to make their own substantive rules in internal matters. Although no longer possessed of the full attributes of sovereignty, they remain a separate people with the power of regulation over their internal and social problems. The establishment of the Office of Hawaiian Affairs is intended to grant similar rights to Hawaiians. The qualification for office and for exercising the franchise does not constitute discrimination. Rather it is a criterion reasonably

designed to further the cause of Hawaiian self-government and to make the Office of Hawaiian Affairs more responsive to the needs of its constituents. It is directed to participation by the governed in the governing agency. This qualification does not cover any other government agency or activity. In conclusion, these provisions are constitutional due to the unique legal status of Hawaiians. (See Santa Clara Pueblo, et al. v. Julia Martinez, et al., 48 L.W. 4412 (5/16/78); Morton v. Mancari, 417 U.S. 535 (1974).)

Your Committee of the Whole recommends the adoption of Com. Whole Rep. No. 13 and consideration of the passage of Com. P. No. 13, RD. 1, on second reading.

Exhibit C

Defendant's Motion for Partial Summary Judgment
(Feb. 28, 1997)

Debates in Committee of the Whole on

HAWAIIAN AFFAIRS

Committee Proposal No. 13

(Articles XI [X], XII [XI], XVI [XIV] and XVIII [XVI])

Chairman: DELEGATE HARTWELL BLAKE

Saturday, September 2, 1978 • Evening Session

The Committee of the Whole was called to order at 5:12 p.m.

Delegate Blake presided as Chairman.

CHAIRMAN: The Committee of the Whole will come to order. The Convention has referred Committee Proposal No. 13 to this Committee of the Whole for consideration. There is only one amendment, which will be marked No. 1. The first title is "Public Trust," the next is "Office of Hawaiian Affairs; Establishment of Board of Trustees," and the third title is "Powers of Board of Trustees." Does everybody have that amendment? At this time, the Chair would like to call a 5-minute recess.

At 5:20 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 5:25 p.m.

CHAIRMAN: The Committee of the Whole will please come to order. The Convention has referred Committee Proposal No. 13 to this Committee of the Whole for consideration. We have before us an amendment submitted by Delegate De Soto. This is purely an administrative amendment. If there's no objection from the floor, I

would like to have the delegates go through this amendment here before we get into any other discussion. Is there any objection from the floor? Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman, the amendment before this body for consideration, coupled with my encouragement for the adoption of Committee Proposal No. 13, is a matter of housekeeping. This proposal attempts to define, as the committee intended, the terms "native Hawaiian" and "Hawaiian." It does this through sections 4, 5, 6 and 7 of Committee Proposal No. 13. I encourage the adoption of this amendment.

DELEGATE WAIHEE: Second the motion, Mr. Chairman.

CHAIRMAN: It has been moved and seconded that the amendment be adopted. Is there any discussion on the amendment? The question – all in favor of this amendment say aye. Opposed, no. The ayes have it. The motion is carried.

At this time, I have to remind you again about procedures. Again I ask you to be courteous to one another – and by courtesy I don't mean reading the newspaper or talking to one another o. joshing around on the side. And if we entertain this courtesy, maybe we can be out of here by 6:00. Also, again the Chair will recognize everyone who wishes to speak. As you all know, there will be roll calls if necessary. At this time, the Chair recognizes Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman, I speak in favor of Committee Proposal No. 13 relating to Hawaiian affairs, which establishes a public trust entity for the

benefit of the people of Hawaiian ancestry. I am again honored to stand on this convention floor and speak on behalf of the Committee on Hawaiian Affairs, our constituencies and the many citizens who testified at our public hearings in support of Committee Proposal No. 13.

Mr. Chairman, as you well know, and fellow delegates, I was elected from District 21A, the Waianae Coast – the home of the largest Hawaiian community in the State of Hawaii. Forty-five percent of the residents of the Waianae Coast are of Hawaiian ancestry – a Hawaiian constituency of more than 12,000. It is no wonder, then, that Committee Proposal No. 13 is very close to my heart and to my mind.

The primary purpose of proposal 13 is to grant to Hawaiians the right to determine the priorities which will effectuate the betterment of their condition and welfare. Proposal 13 amends Article XI of the Constitution of the State of Hawaii by including in Article XI that portion of the trust created by Section 5(f) of the Admission Act for the benefit of native Hawaiians. It establishes the Office of Hawaiian Affairs and an elected board of trustees to administer the trust created for the benefit of all Hawaiians. The board of trustees is granted the authority to formulate policy relating to the affairs of all Hawaiians. It unites Hawaiians as a people and allows Hawaiians to affirmatively better their condition by giving them the opportunity to assume the trust obligation imposed on the State by Section 5(f) of the Admission Act and to discharge the trust obligation by careful assessment and planning for the future welfare of all Hawaiians. The goal of the Office of Hawaiian Affairs is to address the modern-day problems of Hawaiians which are rooted in as

dark and sad a history as will ever mark the annals of time.

Before the advent of the foreigner, the Hawaiians had succeeded in developing a culture that was truly remarkable. They took from the 'aina and from the sea for sustenance. In the words of Ralph S. Kuykendall, one of the most thorough of the historians of Hawaii, Hawaiians were "a healthy, robust, intelligent, and good tempered folk" who lived religiously, arduously and intelligently.

As evidenced by the feats of the Hokule'a, the pre-Captain Cook Hawaiians were great sailors, traveling long distances in canoes. They were great navigators, with an almost mystic knowledge of the stars. They were great fishermen. They were great farmers and engineers. In the raising of taro, the Hawaiians perfected a technique of building irrigation ditches, a feat requiring no little industry and ingenuity, which has never been improved on. They were great doctors, skilled in the use of herbs. They were a great and proud people.

The land system before the coming of the foreigner was inseparably a part of religion and government. To destroy one was to destroy the other. The Hawaiians worshipped nature, which expressed itself in a system of rules – kapus – that regulated their daily lives. The islands were divided into kingdoms, each ruled by a king. In land matters, as in many others, the king's words were supreme. Part of the land the king reserved for himself for his own private use; the rest he portioned out to his subordinates, who in turn portioned it out to their subordinates, all the way down to the hoa'aina, who tilled the soil.

In the life the Hawaiians lived before the foreigners, there was no future orientation. The gods were immediate to the common people and so were the kings: they gave directly and took away directly. Tomorrows were only a succession of todays. This was, thought the Hawaiian, as it should be; it was all he knew. If you took away his religion, his government, if you took him away from the 'aina or from the economy that he knew, you destroyed him. And many people did do this.

With the first real influx of foreign invaders near the end of the 18th century, the change from the Hawaiian subsistence economy – and with it the whole cultural structure – to an exchange economy began at an astonishingly accelerated speed. Mr. Chairman, by 1820, when the first missionaries arrived, Kamehameha II had formally abolished the kapu system, thus knocking the props from under the old system of religion. The fur trade, the sandalwood trade, the whaling trade, and their accompanying influences had already infected the native culture and had neglected to provide any healing power.

The new ideas and practices, incomprehensible to the Hawaiians yet powered irresistibly by the superior prestige and force of the invaders, broke the force of the old kapu system. It also weakened the tie between the commoners and the chiefs, who had been their leaders from time immemorial.

By 1840, native morale had all but been destroyed. The new ways may have been superior, but to Hawaiians this was little compensation for the destruction of the old and the familiar. Thousands of Hawaiians died. From the missionary estimate in 1826 to the official Hawaiian

census in 1919, the number of full-blooded Hawaiians had decreased from 142,650 to 22,500, while the Hawaiian death rate had correspondingly increased until it exceeded considerably the death rate of any other race inhabiting the Islands at that time.

Mr. Chairman, the Hawaiian had become hopelessly land-less. All the stories that have been told with respect to the Great Mahele and that divisioning of land – finally the inevitable happened: our mo'i wahine Queen Liliuokalani was dethroned – a bloodless revolution but a queen deposed, a legitimate monarchy overthrown. Many, many injustices have been documented in our history. All these injustices have caused us now to stand in public and bare our souls once more, bare our souls so that someone, someplace will begin to listen.

Mr. Chairman, fellow delegates, if there must be a statement of need before Committee Proposal No. 13 is accepted or adopted by this Convention, then surely the following statistics indicate it: according to the 1975 census updates, the present Hawaiian population is a young one; there are roughly 60,000 Hawaiians, or approximately 54 percent of the total Hawaiian population, who are under the age of 20. It is my dream and the dream of my people that the Hawaiian today be given the opportunity to provide for betterment of the condition and well-being of these young Hawaiians, to address the contemporary problems which Hawaiians face – of crime, inadequate housing conditions, welfare rolls, education. Committee Proposal No. 13, Mr. Chairman, I submit, attempts to build the steps for native Hawaiian people so that they may realize, or at least decide some point in, self-determination.

All kinds of people have helped us in the planning. Your Committee on Hawaiian Affairs begs this Convention to consider, and submits that this native Hawaiian office is essential for the protection and the preservation of the Hawaiian race. I ask all of you to consider this and adopt this proposal. Mahalo.

CHAIRMAN: Thank you, Delegate De Soto. Any further discussion? Delegate Kaapu.

DELEGATE KAAPU: Mr. Chairman, do you propose we take this section by section or shall we take the proposal in its entirety?

CHAIRMAN: We will take it in its entirety.

DELEGATE KAAPU: This makes it considerably easier and a lot faster. The proposal of a Hawaiian trust is analogous to creating an entity like that of the University of Hawaii, which has the power to hold and own property, to create and administer programs and to govern itself under certain general laws of the State as well as the Constitution.

Its need is not in order to bring about immediately, by the enactment of this proposal, any new benefits to Hawaiians, but to do as the Constitution ought, which is to set the framework by which resources can be managed and benefits achieved through setting the frame by which those who are to receive and enjoy these benefits might in some democratic manner govern the disposition of these resources and settle on policies among themselves through the process of election and through the process of scrutiny by those to whom they are responsible. That in general is what the proposal for a Hawaiian trust

creates. There are several sections which I'll touch on quickly.

First is the change in the article title in the Constitution to reflect the broader scope of the concerns it now handles. Secondly, there is a redefinition of the public trust, of those elements in the Admission Act which are of benefit to Hawaiians, by setting forth clearly what those two categories of beneficiaries are to make it more easily handleable to administer – and that is, that the beneficiaries of the public trust under Section 5(f) are in fact the general public and native Hawaiians. The next section is on creation of the Office of Hawaiian Affairs and establishment of a board of trustees. The Office of Hawaiian Affairs would of course be that administrative body that would handle all the programs; and it is so constructed that it might handle both programs from which the benefits are directly present – to only those of one-half Hawaiian ancestry as well as to those of any part-Hawaiian ancestry. It allows for an umbrella organization which could someday embrace the Hawaiian homes commission, all of the Hawaiian home lands department and all the functions. It also provides a receptacle for the possible receipt and administration of any reparations that might be coming in the future.

The board of trustees is created as the governing body. It's to be made up of beneficiaries who are native Hawaiians themselves under the broader definition of that meaning. Also of that term, it sets forth that each Island shall be represented and the legislature shall determine the means by which the board is elected, and the qualifications and means by which those qualifications are proven. In other words, the legislature will determine

the details during the implementation period, which is 2 years after ratification of this act and which would provide for the election of directors of the Hawaiian trust, to take place at the next general election subsequent to that time.

The next section defines "native Hawaiian." We have further amended this definition so that the language would be clear in all documents related to that. We have already talked about the effective date for establishment of the Office of Hawaiian Affairs, which is set forth in the next section, and there is a statement that any legislation "shall not diminish or limit the benefits of native Hawaiians . . . " in case that was contemplated by any. That in essence is the nature of the Hawaiian trust entity, which is dictated and demanded by the ease of modern resource management more than anything else. But it does have the added benefit of allowing those who are direct beneficiaries to set their own policies and govern their own affairs through a democratic process.

CHAIRMAN: Thank you, Delegate Kaapu. Does anyone else wish to speak on the subject? Delegate Peterson.

DELEGATE PETERSON: I'm happy to speak a few words in favor of this proposal. I think it's time that native Hawaiians have more impact on their own future, and the transfer to Hawaiians of the responsibilities of self-government is only right and proper. I think that the extension to Hawaiians of all the rights without having a limitation of blood is only a proper extension of these other benefits. So I'm pleased to speak in favor of this proposal.

CHAIRMAN: Thank you, Delegate Peterson. Delegate Sakima.

DELEGATE SAKIMA: Mr. Chairman, I have a couple of questions that are really bothering me.

CHAIRMAN: Would you state the questions one at a time, please.

DELEGATE SAKIMA: I'm sure someone in the Hawaiian affairs committee can answer this: does this meet the constitutional question of having an election for just people of one race in this State? Having an election for those of Hawaiian ancestry only?

DELEGATE WAIHEE: I'll answer that question, if I may. I believe it meets the test because what we have here is that we're dealing with a trust entity and we're delegating the running of the trust to the beneficiaries, which is the normal setup when you're setting up a trust like this, where you elect the board of directors for the trust. I think that the provision itself also allows the legislature to work out the apportionment problem – to thereby get around any problems we might have with a one-vote, one-man situation. I think as far as the election itself is concerned, I believe – and I think the legal counsel concurs with the committee – that it would be constitutional.

DELEGATE SAKIMA: My other concern, Mr. Chairman – although in the committee report it says this is going to be similar to the University of Hawaii, the university comes under the legislature and this, I've noted, is a very autonomous body. It's almost like another county. So I'm just wondering whether we are not going to have another county formed in the State of Hawaii.

DELEGATE KAAPU: Mr. Chairman, in answer to that, I used the analogy of the university only in that it is a body that may hold and receive property, receive gifts, administer programs and conduct its own affairs under general law, and under the legislature in that case. To that extent it is analogous; beyond that, it is a trust that administers to its own beneficiaries only those resources to which it is already entitled. It may additionally receive appropriations from the legislature, but under those conditions it would be subject to such provisions as the legislature would make.

CHAIRMAN: With regard to legal counsel, this has cleared with legal counsel. Any further discussion? Delegate Barr.

DELEGATE BARR: Mr. Chairman, I would like to address the concern that was just raised. In the Constitution as it exists now, there are a couple of sentences that I think are instructive. In Section 2 of Article XI, it states: "The State and its people do further agree and declare that the spirit of the Hawaiian Homes Commission Act looking to the continuance of the Hawaiian homes projects for the further rehabilitation of the Hawaiian race shall be faithfully carried out." And at the end of Section 3, one of those "Provided Thats" that I didn't mention earlier when I spoke, is, provided "that all proceeds and income from the 'available lands', as defined by said Act, shall be used only in carrying out the provisions of said Act."

It seems to be clear that it was the intent of the Admission Act that we recognize a special claim, a special interest on the part of an aboriginal people in these

Islands. And if that effect sets up a separate county, or a separate trust, or a separate university or whatever, it is well past time that we take that step so that we as people meet the obligation that we have to do justice to that aboriginal people.

CHAIRMAN: Thank you, Delegate Barr. Delegate Sterling.

DELEGATE STERLING: May I add to that? The basic interest of Congress, to rehabilitate the Hawaiian people, continues and the errors of the Hawaiian Homes Commission Act, 1920, were rectified by setting up a second trust in the Admission Act. Rather than attempt to draft a second rehabilitation program, Congress delegated the task to the state legislature. The first such legislation in Hawaii was House Bill No. 1469 of the ninth state legislature, 1977, a bill to provide for a native Hawaiian program, governed by a board of trustees who would be native Hawaiians, elected by native Hawaiians in several regions throughout the State. But this bill for a native Hawaiian program was confronted with Section 97, relating to the budget, and it failed because of that.

This was part of the Admission Act. But we set this up, as the chairman so beautifully stated, as the receptacle not only to comply with the Admission Act but for any other possible benefits that may be coming to the Hawaiian people.

CHAIRMAN: Thank you, Delegate Sterling. Delegate Uyehara.

DELEGATE UYEHARA: Mr. Chairman, I have one concern that I'd like someone to answer for me.

CHAIRMAN: Would you state your concern.

DELEGATE UYEHARA: I'm concerned about the language in establishing the board of trustees. As I read it, according to this wording the nine persons who will be elected – it doesn't say how long their terms will be, and I'm wondering if they are going to be forever or if there is some kind of provision that states that there's a rotation of those who are elected.

DELEGATE CROZIER: Mr. Chairman, may I answer that? There are the words "in accordance with law." That's how it's going to be done, the legislature is going to make the final decision on that.

CHAIRMAN: Does that answer your question?

DELEGATE KAAPU: One additional point, Mr. Chairman: it also says "not less than 9 members," so it could be, Mr. Chairman, that there could be more, depending on the legislature.

CHAIRMAN: Any other discussion? Delegate Burgess.

DELEGATE BURGESS: Mr. Chairman, I have a point of information I'd like to address to anyone who can answer it.

CHAIRMAN: State your point of information, please.

DELEGATE BURGESS: The question is on Section 4, which says that the lands granted to the State by Section 5(b) of the Admission Act – and those are the lands that are referred to as "crown lands" – would be administered by the trust. My question is – what lands are those,

what's the area involved, and are those presently all the lands owned by the State of Hawaii, or a portion?

CHAIRMAN: You're on the first page, are you not?

DELEGATE BURGESS: Yes, I'm looking at the first page of the committee proposal, on Section 4, "Public Trust," the second line. Those are crown lands – the lands granted to the State by Section 5(b) of the Admission Act – those, as I understand it, are crown lands. I want to know specifically what lands are entailed – all the lands presently owned by the State of Hawaii? or if not, what approximate portion are they? What lands we are putting into the trust is what I want to know.

CHAIRMAN: Delegate De Soto.

DELEGATE DE SOTO: Mr. Chairman, I will attempt to answer that question. We're not taking any lands and putting them into any kind of trust, just grabbing lands from the State, or any place else. In the Admission Act, it identifies those lands as "available lands" as defined by said act; and all proceeds to come from these available lands shall be used only in carrying out the provisions of said act. These lands are identified in the Admission Act as "available lands," so they may have been ceded lands or public lands.

CHAIRMAN: Delegate Burgess, does that answer your question?

DELEGATE BURGESS: No, Mr. Chairman, my question is – what lands are covered by this second line of Section 4? It excludes available lands, so it's not the available lands – those are different. I'm trying to find out about the crown lands. It's my understanding – and this

may be wrong – that the crown lands are now owned by the State of Hawaii; they are a substantial part of the lands presently owned by the State.

DELEGATE STERLING: Mr. Chairman, may I continue what the chairman was saying? The largest –

CHAIRMAN: Yes, Delegate Silva?

DELEGATE SILVA: I'd like to ask for a short administrative recess.

CHAIRMAN: SO ORDERED.

At 5:52 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.

The Committee of the Whole reconvened at 5:55 p.m.

CHAIRMAN: The Committee of the Whole will come to order. Delegate Burgess, was your inquiry answered?

DELEGATE BURGESS: Yes, it was, thank you.

CHAIRMAN: Is there any other discussion on the floor? Delegate Goodenow.

DELEGATE GOODENOW: Mr. Chairman, I am very much in favor of this, but I have one question that I must ask which has to do with Section 7, the definition of "native Hawaiian." I need some information on this. Is there a system set up to establish the relationship between today and 1778? Have there been records kept, or what is the answer to this?

CHAIRMAN: Delegate Crozier.

DELEGATE CROZIER: I was going to say if the delegate had looked at her amended copy, there is a definition in the back there. She's looking at the old copy.

CHAIRMAN: Just for your information before we move on, Delegate Goodenow, the amendment that was on the floor clarifies "native Hawaiians" and "Hawaiians." One is by blood quantum and the other isn't. This trust will embrace all. However, Hawaiians under the Hawaiian Homes Commission Act will still continue with the things that they are entitled to or under the Organic Act or the act set up by the U.S. Congress. Delegate Kaapu.

DELEGATE KAAPU: Mr. Chairman, I think the question may have run a little bit beyond that and that is that – and the answer would be, all of those who are now qualified for the Hawaiian homes program would be native Hawaiians for all of the other programs that don't require blood quantum, but some of the Hawaiians will not qualify presently for Hawaiian homes. However, when it comes to voting and determinations of who is Hawaiian, the question of how that is proven often comes up. In this proposal, the matter is left to the legislature to determine the procedure whereby that may be done. Among the many procedures that are known are statements, birth certificates, testimony by those who know, court records and other things. But the legislature is left with the discretion of setting up procedures for determining that.

CHAIRMAN: Delegate Goodenow, has your question been answered?

DELEGATE GOODENOW: Yes, thank you.

CHAIRMAN: Delegate Waihee.

DELEGATE WAIHEE: I just wanted to clarify for those of us – Delegate Burgess was satisfied with his answer, but to clear the record so the rest of us know what transpired in our little secret caucus here – what we need to make clear is that this proposal does not transfer to the trust any state lands. What is concerned is that Section 5(f) of the Admission Act sets out categories of individuals or persons who are to receive the revenues from all public lands that were given to the State of Hawaii. Now these categories are generally like agriculture, education and one category in there, one of the five categories (or two, depending how you look at it) is native Hawaiians. So what the trust would do would be to mandate the section of these revenues from public lands which are to be given which are presently mandated by the Admission Act to be held in trust for Hawaiians – would be transferred directly into this new entity which we are calling the Hawaiian affairs trust. So what we're talking about in this paragraph is not the transfer of lands but the transfer of revenues that are generated by public lands.

The second part of the article, Section 6 I believe, which talks about the disposition of lands and so forth in the rest of this proposal, is futuristic. What we are allowing here is for the corporate entity, or this trust entity that would be established – allowing this trust entity to have the ability to own and receive gifts of land, including, maybe – if we ever get anything from – reparations. This vehicle would have that ability. So I think if we clarify this – we're not taking away any public lands, we're merely directing some of the revenues that are supposed to go to the Hawaiian people.

CHAIRMAN: For all the delegates present, that was what Delegate Burgess' inquiry was and the answer given by Delegate Waihee. Any other discussion?

DELEGATE WAIHEE: If there is no further discussion, I move that we rise and report to the Convention that we recommend adoption of Committee Proposal No. 13 with one amendment.

DELEGATE BARR: Second.

CHAIRMAN: It has been moved and seconded that we rise and report that we recommend adoption of Committee Proposal No. 13, with one amendment. Those in favor say aye. Opposed, say no. The motion is carried. I want to commend the group for the courtesy and quiet.

At 6:03 p.m., the Committee of the Whole stood in recess subject to the call of the Chair.